

Amendment No. 1 to SB1447

Yager
Signature of Sponsor

AMEND Senate Bill No. 1447*

House Bill No. 1872

by deleting all language after the caption and by substituting instead the following:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new section:

12-4-115.

(a) As used in this section:

(1) "Agency" means each branch, agency, entity, board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute to purchase or contract for goods or services;

(2) "Consultant" means any person, firm, or corporation who solicits or is retained by an agency to perform, or propose to perform, consultation services for the state. Such consultation services may include, but are not limited to, consultation services related to architecture, safety, quality, information technology, real estate acquisition or disposal, leasing, engineering, environmental, systems integration, land surveying, project management, program management, construction management, or management assistance;

(3) "Contractor" means any consultant, contractor, subcontractor, person, firm, or corporation who solicits an agency, or is retained by an agency, to provide goods or services pursuant to a contract;

(4) "Organizational conflict of interest" means:

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(A) When, because of other relationships or circumstances, a contractor may be unable, or potentially unable to render impartial advice or assistance to an agency, the objectivity of the contractor in performing the contract work is or may be impaired, or the contractor would have an unfair competitive advantage;

(B) When circumstances between a contractor and the agency involve biased ground rules, which may include the following situations:

(i) A potential contractor that has worked, in one government contract, or program, on the basic structure or ground rules of another government contract;

(ii) A potential contractor or member of their immediate family, as defined in § 12-4-106, that has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to any agency, or in providing technical assistance, goods, or other services to recipients of state funds as part of its contractual responsibility; or

(iii) A potential contractor has access to nonpublic information through its performance on a government contract; or

(C) When circumstances between a contractor and the agency involve impaired objectivity, which includes, but is not limited to, the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(i) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, goods, or services that may be purchased by an agency in the course of implementing any program administered by an agency;

(ii) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, goods, or services; or

(iii) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, goods, or services; and

(5) "Unfair competitive advantage" means any circumstance when a contractor bidding for a public contract with any agency possesses information that is confidential, proprietary, or not available to the public, when such information assists the contractor in responding to a procurement solicitation or in obtaining any public contract.

(b) Each agency of the state shall:

(1) Identify and evaluate any actual or potential organizational conflict of interest before awarding or amending any contract for goods or services; and

(2) Avoid, neutralize, and mitigate any actual or potential organizational conflict of interest before awarding or amending any contract for goods or services.

(c) A contractor shall disclose to the agency the existence of any organizational conflict of interest known prior to the award of a public contract, or discovered during contract performance. Such disclosure shall contain all facts and dates relevant to the organizational conflict of interest.

(d)

(1) During the procurement process, each agency of the state shall document any potential or actual organizational conflict of interest and its proposed measures to avoid, neutralize, and mitigate such conflict.

(2) If an actual organizational conflict of interest is discovered after the award or approval of a contract, the agency shall make an immediate and full written disclosure to the comptroller of the treasury that includes a description of the conflict and the action that the agency has taken, or proposes to take, to mitigate such conflict.

(e) If the comptroller of the treasury determines an actual organizational conflict of interest exists between a contractor and an agency pursuant to the process described in subdivision (d)(2), the comptroller may:

(1) Terminate the contract;

(2) Require the agency to take further steps to adequately mitigate the conflict; or

(3) Approve the continuation of the contract to protect the public health or welfare.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it and shall apply to all contracts entered into or renewed on or after such date.